

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BETTY C. UNCANGO,

Case No. 2:14-cv-00824-APG-PAL

Plaintiff,

v.

**REPORT OF FINDINGS AND
RECOMMENDATION**

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

(Mot. To Remand – ECF No. 21)
(Cross-Mot. to Affirm – ECF No. 23)

Defendant.

This matter involves Plaintiff Betty C. Uncango's appeal and request for judicial review of the Acting Commissioner of Social Security, Defendant Carolyn W. Colvin's final decision denying her claim for supplemental security income under Title XVI of the Social Security Act (the "Act"), 42 U.S.C. §§ 1381–83.

BACKGROUND

I. PROCEDURAL HISTORY

On August 16, 2010, Ms. Uncango protectively filed for supplemental security income benefits. AR 118–24.¹ She initially alleged she became disabled on February 1, 1996, at the age of 29. AR 118. However, she later amended the alleged onset date to her protective filing date to August 16, 2010. AR 48, 127. Ms. Uncango was 43 years old at the time she applied. AR 38. In her disability application, she claimed she was unable to work because of diabetes, high cholesterol, asthma, joint pain, insomnia, anxiety, goiter, high blood pressure, neuropathy, arthritis. AR 129. The SSA denied her application initially and on reconsideration. AR 74–77, 83–85.

¹ AR refers to the Administrative Record (ECF No. 15-1), a certified copy of which was delivered to the undersigned upon the Commissioner's filing of her Answer (ECF No. 11).

1 An administrative law judge (“ALJ”) held a hearing on April 9, 2012, where Ms.
 2 Uncango appeared with counsel. AR 45–71. The ALJ accepted testimony from Uncango,
 3 AR 48–66, and a vocational expert, AR 66–70. During the hearing, Ms. Uncango’s counsel
 4 asserted that the theory of her case stemmed from Uncango’s diabetes with neuropathy and
 5 retinopathy, asthma, migraine headaches, arthritis, and depression. AR 49. The ALJ found that,
 6 despite her allegations of debilitating pain, Uncango’s testimony revealed a somewhat normal
 7 level of daily activity and the medical records indicated that her impairments were being
 8 medically managed. AR 33–37.

9 In a decision dated July 13, 2012, the ALJ found that Ms. Uncango was not disabled.
 10 AR 31–39. She requested review of the ALJ’s decision by the Appeals Council, but the ALJ’s
 11 decision became final when the Appeals Council denied review on March 26, 2014. AR 1–4.
 12 On May 22, 2014, Uncango filed a Complaint (ECF No. 1-1) in federal court, seeking judicial
 13 review of the Commissioner’s decision pursuant to 42 U.S.C. § 405(g). The Commissioner filed
 14 her Answer (ECF No. 11) on September 15, 2014. Ms. Uncango filed a Motion to Remand
 15 (ECF No. 21), and the Commissioner filed a Response and Cross-Motion for Summary
 16 Judgment (ECF Nos. 22, 23). No reply brief was filed and the deadline for doing so has expired.
 17 The court has considered the Motion and the Response and Cross-Motion.

18 **DISCUSSION**

19 **I. APPLICABLE LAW**

20 **A. Judicial Review of Disability Determination**

21 District courts review administrative decisions in social security benefits cases under 42
 22 U.S.C. § 405(g). *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). The statute provides
 23 that after the Commissioner has held a hearing and rendered a final decision, a disability
 24 claimant may seek review of that decision by filing a civil lawsuit in a federal district court in the
 25 judicial district where the disability claimant lives. 42 U.S.C. § 405(g). The statute also
 26 provides that the district court may enter, “upon the pleadings and transcripts of the record, a
 27 judgment affirming, modifying, or reversing the decision of the Commissioner of Social
 28 Security, with or without remanding the cause for a rehearing.” *Id.*

1 The Commissioner's findings of fact are conclusive if supported by substantial evidence.
2 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). But the Commissioner's
3 findings may be set aside if they are based on legal error or not supported by substantial
4 evidence. *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006). The Ninth
5 Circuit defines substantial evidence as "more than a mere scintilla but less than a preponderance;
6 it is such relevant evidence as a reasonable mind might accept as adequate to support a
7 conclusion." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In determining whether
8 the Commissioner's findings are supported by substantial evidence, a court "must consider the
9 entire record as a whole and may not affirm simply by isolating a 'specific quantum of
10 supporting evidence'." *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014) (quoting *Hill v.*
11 *Astrue*, 698 F.3d 1153, 1159 (9th Cir. 2012)).

12 Under the substantial evidence test, a court must uphold the Commissioner's findings if
13 they are supported by inferences reasonably drawn from the record. *Batson v. Comm'r Soc. Sec.*
14 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2003). When the evidence will support more than one
15 rational interpretation, a court must defer to the Commissioner's interpretation. *Burch v.*
16 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Consequently, the issue before a court is not
17 whether the Commissioner could reasonably have reached a different conclusion, but whether
18 the final decision is supported by substantial evidence.

19 It is incumbent upon an ALJ to make specific findings so that a court does not speculate
20 as to the basis of the findings when determining if the Commissioner's decision is supported by
21 substantial evidence. *See Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014). Mere cursory
22 findings of fact without explicit statements about what portions of the evidence were accepted or
23 rejected are not sufficient. *Lewin v. Schweiker*, 654 F.2d 631, 634 (9th Cir. 1981). An ALJ's
24 findings should be comprehensive, analytical, and include a statement explaining the "factual
25 foundations on which the ultimate factual conclusions are based." *Id.* *See also Vincent v.*
26 *Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984) (an ALJ need not discuss all the evidence in
27 the record, but must explain why significant probative evidence has been rejected).

1 **B. Disability Evaluation Process**

2 A claimant has the initial burden of proving disability. *Roberts v. Shalala*, 66 F.3d 179,
3 182 (9th Cir. 1995). To meet this burden, a claimant must demonstrate an “inability to engage in
4 any substantial gainful activity by reason of any medically determinable physical or mental
5 impairment which can be expected . . . to last for a continuous period of not less than 12
6 months.” 42 U.S.C. § 423(d)(1)(A). A claimant must provide specific medical evidence to
7 support his or her claim of disability. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998). If a
8 claimant establishes an inability to perform his or her prior work, the burden shifts to the
9 Commissioner to show that the claimant can perform other substantial gainful work that exists in
10 the national economy. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012) (noting that a
11 claimant bears the burden of proof until the final step in the evaluation process).

12 **II. THE ALJ’S DECISION**

13 An ALJ follows a five-step sequential evaluation process in determining whether an
14 claimant is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If at
15 any step an ALJ makes a finding of disability or non-disability, no further evaluation is required.
16 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003).

17 Here, the ALJ followed the five-step sequential evaluation process and issued an
18 unfavorable decision on July 13, 2012 (the “Decision”). AR 31–39. Ms. Uncango does not
19 challenge the ALJ’s findings at steps one through three, but asserts legal error at step four.
20 Specifically, she contends that the ALJ rejected her credibility by improperly assessing her
21 subjective symptom testimony.

22 **A. Step One**

23 The first step of the disability evaluation requires an ALJ to determine whether the
24 claimant is currently engaging in substantial gainful activity (“SGA”). 20 C.F.R.
25 §§ 404.1520(b), 416.920(b). SGA is defined as work activity that is both substantial and gainful;
26 it involves doing significant physical or mental activities, usually for pay or profit. 20 C.F.R.
27 §§ 404.1572(a)–(b), 416.972(a)–(b). If the claimant is currently engaging in SGA, then a finding

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1 of not disabled is made. If the claimant is not engaging in SGA, then the analysis proceeds to the
2 second step.

3 At step one in the Decision, the ALJ found that Ms. Uncango had not engaged in SGA
4 since August 16, 2010, the amended alleged onset date. AR 33. Given Uncango's lack of SGA,
5 the ALJ's analysis proceeded to the second step.

6 **B. Step Two**

7 The second step of the disability evaluation addresses whether a claimant has a
8 medically-determinable impairment that is severe or a combination of impairments that
9 significantly limits him or her from performing basic work activities. 20 C.F.R. §§ 404.1520(c),
10 416.920(c). An impairment or combination of impairments is not severe when medical and other
11 evidence establish only a slight abnormality or a combination of slight abnormalities that would
12 have no more than a minimal effect on the claimant's ability to work. 20 C.F.R. §§ 404.1521,
13 416.921; Social Security Rulings ("SSRs") 85-28 (Jan. 1, 1985), 96-3p, 61 Fed. Reg. 34468 (July
14 2, 1996); 96-4p, 61 Fed. Reg. 34488 (July 2, 1996).² If a claimant does not have a severe
15 medically-determinable impairment or combination of impairments, then an ALJ will make a
16 finding that a claimant is not disabled. If a claimant has a severe medically-determinable
17 impairment or combination of impairments, then an ALJ's analysis proceeds to the third step.

18 **1. Ms. Uncango's Severe Physical Impairment: Diabetic Neuropathy**

19 At step two in the Decision, the ALJ found that Ms. Uncango had the severe impairment
20 of diabetic neuropathy. AR 33. She was evaluated and treated for the following medically
21 determinable impairments: asthma, goiter, hypertension, insulin-dependent diabetes mellitus,
22 history of headaches and nausea, and history of fractured little toe. *Id.* However, these
23 conditions were being medically managed and would be properly controlled as long as Uncango
24 adhered to recommended medical management and medication compliance. *Id.* Additionally,
25 no aggressive treatment was recommended or anticipated for these conditions. *Id.* Thus, other

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27 ² SSRs are the SSA's official interpretations of the Act and its regulations. *See Bray v. Comm'r Soc. Sec.*
28 *Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. § 402.35(b)(1). They are entitled to
some deference as long as they are consistent with the Act and regulations. *See Bray*, 554 F. 3d at 1223
(finding ALJ erred in disregarding SSR 85-41).

1 than diabetic neuropathy, Ms. Uncango's medically determinable impairments were non-severe.
2 *Id.*

3 **2. Ms. Uncango's Non-Severe Mental Impairments**

4 When the SSA evaluates the severity of mental impairments, 20 C.F.R. § 404.1520a
5 requires the use of a "special technique" to evaluate four broad functional areas known as the
6 "Paragraph B Criteria" in Listing 12.00C of the Listing of Impairments set forth at 20 C.F.R.,
7 Part 404, Subpart P, Appendix 1. *Id.* See also 20 C.F.R. § 1520a (explaining the psychiatric
8 review technique); SSR 96-8p, 61 Fed. Reg. 34474 (July 2, 1996) (noting that application of the
9 technique is documented on a Psychiatric Review Technique Form). Paragraph B criteria require
10 a claimant to show that he or she experienced marked limitations in mental function. *Id.* § 12.00.
11 To satisfy Paragraph B criteria, mental impairments must result in at least two of the following:
12 (i) marked restriction in activities of daily living; (ii) marked difficulties in maintaining social
13 functioning; (iii) marked difficulties in maintaining concentration, persistence, or pace; or (iv)
14 repeated episodes of decompensation, each of extended duration. See, e.g., *id.* § 12.04(B). A
15 "marked" limitation means "more than moderate but less than extreme." *Id.* § 12.00(C).
16 Repeated episodes of decompensation with extended duration means three episodes within one
17 year, or an average of once every four months, each lasting for at least two weeks. *Id.*
18 § 12.00(C)(4).

19 If the Paragraph B criteria are not met, a claimant may nevertheless be found disabled
20 under alternative "Paragraph C criteria." *Id.* § 12.00(A). Under the regulations, Paragraph C
21 criteria are considered only if the Paragraph B criteria are not satisfied. *Id.* Paragraph C criteria
22 require a medically documented history of a chronic affective disorder of at least two years
23 duration that has caused more than a minimal limitation of ability to do basic work activities with
24 symptoms or signs currently attenuated by medication or psychosocial support, and one of the
25 following: (1) repeated episodes of decompensation each of extended duration; or (2) a residual
26 disease process that has resulted in such marginal adjustment that even a minimal increase in
27 mental demands or change in the environment would be predicted to cause the individual to
28 decompensate; or (3) current history of one or more years in ability to function outside a highly

1 supportive living arrangement, with an indication of continued need for such arrangement. *See*
2 20 C.F.R. Pt. 404, Subpt. P, App. 1, §§ 12.02(C), 12.03(C), 12.04(C), 12.05(C), 12.06(C).

3 At step two in the Decision, the ALJ determined that Ms. Uncango had two non-severe
4 mental impairments: affective mood disorder and anxiety related disorder. AR 33. The ALJ
5 noted that the record contained no treatment records for psychiatric claims. *Id.* Thus, the
6 medical evidence did not support a finding that Uncango's mental impairments were severe. *Id.*
7 The ALJ also considered the four broad functional areas set out in the disability regulations for
8 evaluating mental disorders. AR 34. He specifically evaluated the Paragraph B Criteria and
9 concluded that the evidence showed that Ms. Uncango suffered: (i) no limitation in activities of
10 daily living; (ii) no limitation in social functioning; (iii) mild limitations in concentration,
11 persistence, or pace; and (iv) no episodes of decompensation that have been of extended
12 duration. *Id.* *See also* AR 196–209, 267–80 (Psychiatric Review Technique Forms completed
13 by Mark Richman, Ph.D., and Pastora Roldan, Ph.D.). The ALJ also considered Paragraph C
14 criteria for Listings 12.04 (affective disorders) and 12.06 (anxiety-related disorders). AR 34.
15 However, the record failed to establish the presence of Paragraph C criteria. *Id.* Given the lack
16 of medical evidence and the absence of paragraph B or C criteria, the ALJ found that Uncango's
17 mental disorders, considered singly and in combination, did not limit her ability to perform basic
18 mental work activities. AR 33–34. Uncango's affective mood disorder and anxiety related
19 disorder were therefore non-severe. *Id.*

20 To summarize his findings at step two, the ALJ found Uncango had one *severe*
21 impairment, diabetic neuropathy, as well as numerous *non-severe* impairments: asthma, goiter,
22 hypertension, insulin-dependent diabetes mellitus, history of headaches and nausea, history of
23 fractured little toe disorder, affective mood disorder, and anxiety related disorder. AR 33–34.
24 Because Uncango had one severe medically-determinable impairment, the ALJ's analysis
25 proceeded to the third step.

26 C. Step Three

27 Step three of the disability evaluation requires an ALJ to determine whether a claimant's
28 impairments or combination of impairments meet or medically equal the criteria of an

1 impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, which is commonly referred to
 2 as the “Listings.” 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and
 3 416.826. If a claimant’s impairment or combination of impairments meet or equal the criteria of
 4 the Listings and meet the duration requirement (20 C.F.R. §§ 404.1509, 416.909), then an ALJ
 5 makes a finding of disability. 20 C.F.R. §§ 404.1520(h), 416.920(h). If a claimant’s impairment
 6 or combination of impairments does not meet or equal the criteria of the Listings or meet the
 7 duration requirement, then the analysis proceeds to the next step.

8 At step three in the Decision, the ALJ found that the evidence did not support a finding
 9 that Ms. Uncango had the severity of symptoms required, either singly or in combination, to
 10 meet or equal Listings 1.02 (major dysfunction of a joint(s)), 1.04 (disorders of the spine), 3.03
 11 (asthma), 11.14 (peripheral neuropathies), 12.04 (affective disorders), and 12.06 (anxiety-related
 12 disorders). AR 34. No treating or examining physician stated findings equivalent in severity to
 13 the criteria of any listed impairment, and the evidence did not present medical findings
 14 equivalent in severity to the criteria of any listed impairment. *Id.* Thus, the ALJ concluded that
 15 Uncango did not have an impairment or combination of impairments that meet or medically
 16 equal one of the impairments described in the Listings. *Id.* As such, the ALJ’s analysis
 17 continued to Uncango’s residual functional capacity (“RFC”).

18 **D. Step Four – Uncango’s RFC and ability to perform PRW**

19 The fourth step of the disability evaluation requires an ALJ to determine whether a
 20 claimant has the RFC to perform her past relevant work (“PRW”). 20 C.F.R. §§ 404.1520(f),
 21 416.920(f). To answer this question, an ALJ must first determine a claimant’s RFC. 20 C.F.R.
 22 §§ 404.1520(e), 416.920(e). RFC is a function-by-function assessment of a claimant’s ability to
 23 do physical and mental work-related activities on a sustained basis despite limitations from
 24 impairments. SSR 96-8p, 61 Fed. Reg. 34474 (July 2, 1996). In making this finding, an ALJ
 25 must consider all the relevant evidence such as symptoms and the extent to which they can be
 26 reasonably be accepted as consistent with the objective medical evidence and other evidence. 20
 27 C.F.R. §§ 404.1529, 416.929; SSR 96-4p, 61 Fed. Reg. 34488 (July 2, 1996); 96-7p, 61 Fed.
 28 Reg. 34483 (July 2, 1996). To the extent that statements about the intensity, persistence, or

1 functionally limiting effects of pain or other symptoms are not substantiated by objective
2 medical evidence, an ALJ must make a finding on the credibility of a claimant's statements
3 based on a consideration of the entire case record. An ALJ must also consider opinion evidence
4 in accordance with the requirements of 20 C.F.R. §§ 404.1527 and 416.927 and SSRs 96-2p, 61
5 Fed. Reg. 34489 (July 2, 1996); 96-5p, 61 Fed. Reg. 34471 (July 2, 1996); and 06-3p, 71 Fed.
6 Reg. 45593 (Aug. 9, 2006).

7 After considering the entire record, the ALJ concluded that Uncango had the RFC to
8 perform light work as defined in 20 C.F.R. § 416.967(b) including:

9 occasional postural activities; occasional use of the nondominant left upper
10 extremity with no nondominant left upper extremity overhead lifting; avoid
11 concentrated exposure to extreme-temperatures, chemicals, and pulmonary
irritants; and avoid concentrated exposure to hazardous machinery, unprotected
heights, and operational control of moving machinery.

12 AR 34–35. In making this finding, the ALJ “considered all symptoms and the extent to which
13 these symptoms can reasonably be accepted as consistent with the objective medical evidence
14 and the other evidence.” AR 35. He also considered opinion evidence. *Id.* Although the ALJ
15 found that Uncango's impairments could reasonably be expected to cause her alleged symptoms,
16 the ALJ determined that her statements concerning the intensity, persistence and limiting effects
17 of those symptoms were not credible to the extent they were inconsistent with the RFC
18 assessment. AR 36.

19 The ALJ found that Ms. Uncango's activities of daily living and testimony undermined
20 her credibility. AR 35–36. She alleged she experienced diabetes, carpal tunnel syndrome, high
21 cholesterol, asthma, insomnia, goiter, high blood pressure, neuropathy, arthritis, anxiety, and
22 depression. *See* AR 129, 155, 163 (Disability Reports). She claimed her impairments caused
23 difficulty with activities of daily living, personal care, exertional and nonexertional activity,
24 postural activity, pain, and working. AR 158, 166.

25 Despite her alleged impairments, in September 2010, Ms. Uncango reported that her
26 activities of daily living included checking her blood sugar, taking insulin shots, preparing and
27 having simple meals with her daughters, helping her daughters with their homework, and
28 watching television. AR 35, 147–54. She stated she had no difficulty with personal care, except

1 requiring additional time due to her left arm pain. AR 35, 148. She admitted she could do
2 housework including washing dishes, washing clothes, dusting, and vacuuming. AR 35, 149.
3 She reported she could drive, tried to go outside at least once a day, and could shop in stores for
4 food and sundries. AR 35, 150. She acknowledged she enjoyed listening to music, watching
5 television with her kids, and spent time talking on the phone with her mother everyday or as
6 often as she could. AR 35, 151. She denied use of any aids such as crutches, walker,
7 wheelchair, cane, glasses, or contact lenses. AR 153.

8 Despite her daily activities, Ms. Uncango reported that her impairments affected her
9 lifting, standing, reaching, walking, kneeling, stair climbing, using hands, and completing tasks.
10 AR 152. She stated that she could only walk for 20 feet before she needed to take a five-minute
11 rest. AR 35, 152. When asked if she finished what she started, Uncango marked “no” but later
12 noted that she can follow spoken instructions. AR 35, 152. She stated she got along with others
13 and had no problems handling changes in routine, although she noted that she did not handle
14 stress well because it elevated her blood sugar level. AR 35, 153.

15 During the administrative hearing, Ms. Uncango testified that each day she checks her
16 blood sugar, injects insulin, and takes medications for her various impairments. AR 51–52.
17 When asked why she is unable to work, Uncango explained that she had pain in her lap from
18 diabetic neuropathy and in her hands from arthritis, which limited the use of her left arm.
19 AR 53–55. She also testified that she experienced migraine headaches about three times per
20 week. AR 55. She testified that she drives her daughter to school every morning and drives
21 herself to doctor’s appointments and the grocery store. AR 56–57. During the day, Uncango
22 testified that she attempts cleaning around the house, including washing dishes, vacuuming, and
23 laundry. AR 57–59. She would lie down and take her pain medication if her daily activities and
24 chores gave her pain. AR 62. When asked why she would be unable to work an eight-hour shift,
25 Uncango stated

26 To sit down just for a couple of hours, my back starts to hurt. To stand up for so
27 long, my feet starts to hurt, my lap starts to hurt, my leg starts to shake. I have

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1 asthma, you know, it's short breath just standing, you know, an hour or half hour I
2 start to have my asthma....

3 AR 64–65.

4 The ALJ also considered the third party function report completed by Linda T.
5 Chargualaf in September 2010. AR 36 (citing AR 139–46). Although a layperson can offer an
6 opinion on a diagnosis, the severity of a claimant's symptoms, or the side effects of medications
7 in relationship to a claimant's ability to work, the ALJ noted that layperson's opinion "is far less
8 persuasive on those same issues than are the opinions of medical professionals as relied on
9 herein." *Id.* Ms. Chargualaf's allegations and admissions were largely similar to Ms. Uncango's
10 statements. *Id.* Although Chargualaf stated she did not know Uncango's activities of daily
11 living, she confirmed that Uncango cared for her daughters. AR 36, 140. Ms. Chargualaf
12 reported that Uncango was able to do household chores such as laundry, washing dishes,
13 vacuuming, sweeping, and dusting. AR 141. She also noted that Ms. Uncango could prepare
14 food, go outside, drive a vehicle, shop for groceries, pay bills, watch television, listen to music,
15 and "mingle" on holidays. AR 142–43. However, the report claimed that medication did not
16 seem to help Ms. Uncango's pain as she still experienced pain while sitting and lying down.
17 AR 139. The ALJ found that Ms. Chargualaf's opinion was not an unbiased because she had a
18 relationship motivation to support Uncango. AR 36. Most importantly, the ALJ found Ms.
19 Chargualaf's statements were not supported by the clinical or diagnostic medical evidence
20 discussed in his Decision. *Id.* The ALJ concluded that Chargualaf was only credible to the
21 extent Ms. Uncango could do the work. *Id.*

22 After analyzing Uncango's credibility pursuant to SSR 96–7p, Fed. Reg. 34,483-01 (July
23 2, 1996)), the ALJ determined that her allegations were not fully credible. AR 35. In contrast to
24 her alleged impairments, Uncango maintained "a somewhat normal level of daily activity and
25 interaction. AR 36. The ALJ opined that some of the physical and mental abilities and social
26 interactions required to perform Uncango's daily activities are the same as those necessary for
27 obtaining and maintaining employment. *Id.* Thus, her ability to participate in such activities
28 undermined the credibility of her allegations of disabling functional limitations. *Id.*

1 The ALJ considered and discussed Uncango's treatment records dated August 2009
2 through March 2012. AR 36. The ALJ also considered but did not completely adopt the RFC
3 assessments of any consultative examiner or state agency consultant. AR 37. The ALJ
4 determined that the assessments of all opining physicians were "generally consistent," finding
5 that (i) all assessed that Uncango was able to perform a range of work with some differences in
6 the degree of specific function-by-function limitations, and (ii) the opinions were "all reasonable
7 and supported by the record as a whole." *Id.* The ALJ adopted "specific restrictions on a
8 function-by-function basis" that were "best supported by the objective evidence as a whole." *Id.*
9 The ALJ noted that no medical source statement from any source suggested functional
10 limitations more restrictive than the RFC stated in the Decision. *Id.* See also AR 359–89
11 (Consultative Examination Reports by Zev Lagstein, M.D., for internal medicine, Simon J.
12 Farrow, M.D., for neurology, and Quinton Spencer, O.D., for ophthalmology); AR 285–92
13 (Physical RFC Assessment by Elsie Villaflor, M.D.). In addition, the ALJ considered and gave
14 great weight to the assessments of the state agency psychiatric consultants who opined that Ms.
15 Uncango's mental impairments were non-severe and that she had had no restrictions on activities
16 of daily living; no difficulties in maintaining social functioning; mild difficulties in maintaining
17 concentration, persistence, or pace; and no repeated episodes of decompensation, each of
18 extended duration. AR 37 (citing AR 196–209, 267–80 (Psychiatric Review Technique Forms
19 by Mark Richman, Ph.D., and Pastora Roldan, Ph.D.)). He adopted a similar mental RFC as the
20 state agency psychiatric consultants "given there were no treatment records regarding psychiatric
21 claims." *Id.*

22 The ALJ's findings regarding Ms. Uncango's RFC were more generous than that of Dr.
23 Lagstein, the internal medicine physician who opined that Uncango would be able to perform a
24 range of medium work. AR 37 (citing AR 359–70, Dr. Lagstein's Report). The ALJ noted that
25 Dr. Lagstein's disability statement did not adequately take into consideration all of Ms.
26 Uncango's subjective and objective symptoms, signs, limitations, and severity of condition
27 including side effects of medication. *Id.* Additionally, the ALJ determined that Dr. Lagstein was
28 also unable to have access to Uncango's entire medical record and testimony. *Id.* Thus, the ALJ

1 found that Uncango's physical restrictions were more limiting and lowered her RFC to a range of
2 light work. *Id.* Ms. Uncango does not challenge the ALJ's findings regarding the medical
3 evidence, AR 33–36, or the weight afforded to the consultative examiners or the state agency
4 psychiatric consultants, AR 37–38. *See* Pl's Mot. (ECF No. 21).

5 In sum, Uncango's subjective complaints were deemed less than fully credible and the
6 objective medical evidence did not support the alleged severity of her symptoms. AR 38. Thus,
7 the ALJ found that the evidence as a whole supported the RFC assessed in the Decision. *Id.*

8 Once an ALJ has determined a claimant's RFC as an initial consideration at step four, an
9 ALJ utilizes the RFC assessment to determine whether a claimant can perform her PRW. 20
10 C.F.R. §§ 404.1520(f), 416.920(f). PRW means work performed either as a claimant actually
11 performed it or as it is generally performed in the national economy within the last fifteen years
12 or fifteen years prior to the date that disability must be established. In addition, the work must
13 have lasted long enough for a claimant to learn the job and to perform it as SGA. 20 C.F.R.
14 §§ 404.1560(b), 404.1565, 419.960(b), 416.965. If a claimant has the RFC to perform his or her
15 past work, then an ALJ makes a finding that a claimant is not disabled.

16 At step four in the Decision, the ALJ concluded that Uncango had no PRW. AR 38. As
17 a result, the ALJ continued to step five.

18 **E. Step Five**

19 Step five of the disability evaluation requires an ALJ to determine whether a claimant is
20 able to do any other work considering his RFC, age, education, and work experience. 20 C.F.R.
21 §§ 404.1520(g), 416.920(g). If he or she can do other work, then an ALJ makes a finding that a
22 claimant is not disabled. Although a claimant generally continues to have the burden of proving
23 disability at this step, a limited burden of going forward with the evidence shifts to the
24 Commissioner. The Commissioner is responsible for providing evidence that demonstrates that
25 other work exists in significant numbers in the national economy that the claimant can do.
26 *Yuckert*, 482 U.S. at 141–42; *see also Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012) (citing
27 42 U.S.C. § 423(d)(2)(A)).
28

1 The Medical-Vocational Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2,
2 commonly known as the “Grids,” aid the ALJ in the analysis at step five for cases that cannot be
3 evaluated on medical considerations alone. The Grids consist of three “Tables” that each
4 represent a different RFC: sedentary, light, and medium work. *Id.* Each Table also presents the
5 vocational factors Congress has identified as important: age, education, and work experience.
6 For individuals whose characteristics match the criteria of a particular Grid rule, each rule
7 “directs a conclusion as to whether the individual is or is not disabled. *Id.* When a claimant
8 cannot perform substantially all of the exertional demands of work at a given level of exertion
9 and/or has non-exertional limitations, the ALJ uses the Grids as a framework for decision-
10 making unless there is a rule that directs a conclusion of “disabled” without considering the
11 additional exertional and/or non-exertional limitations. *See* SSR 83-12, SSR 83-14, 43 Fed. Reg.
12 55349-01 (Nov. 28, 1978). If a claimant has solely non-exertional limitations, section 204.00 of
13 the Grids provides a framework for decision-making. *See* SSR 85-15, 43 Fed. Reg. 55349-01
14 (Nov. 28, 1978).³

15 At step five in the Decision, the ALJ determined that Ms. Uncango could perform jobs
16 that exist in significant numbers in the national economy, considering her age, education, work
17 experience, and RFC, in conjunction with the Grids. AR 38. On the alleged date of disability,
18 she was 43 years old, which categorized her as a younger individual age 18–49. *Id.* Uncango
19 has at least a high school education and is able to communicate in English. *Id.* The
20 transferability of her job skills was not an issue because she had no PRW. *Id.*

21 If Ms. Uncango had the residual functional capacity to perform the full range of light
22 work, the ALJ noted that Medical-Vocational Rule 202.20 would direct a finding of “not
23 disabled.” *Id.* However, Uncango’s additional limitations impeded her ability to perform all or
24 substantially all of the requirements of light work. *Id.* To determine the extent to which her
25 limitations eroded the unskilled light occupational base, the ALJ asked a vocational expert,
26 Kenneth Lister, M.Ed., a hypothetical question regarding whether jobs exist in the national

27 ³ SSRs 83-12, 83-14, and 83-15 were rewritten to make them easier to understand and then republished.
28 *See* 45 Fed. Reg. 55566 (Aug. 20, 1980).

economy for an individual with Uncango's age, education, work experience, and RFC. AR 38–39, 66–70. Citing the Dictionary of Occupational Titles (“DOT”), Mr. Lister testified that the individual would be able to perform the requirements of three representative jobs:

1. Casino Host (DOT 349.667-014, 1991 WL 672884), which is light, unskilled work, specific vocational profile (“SVP”) of 2, 7,000 national jobs, and regional jobs approximately 2% of the national amount;
2. Call Out Operator (DOT 237.367-022, 1991 WL 672188), which is sedentary unskilled work, SVP 2, 187,000 national jobs, regional jobs approximately 2% of the national amount; or
3. Surveillance System Monitor (DOT 379.367-010, 1991 WL 673244), which is sedentary unskilled work, SVP 2, 150,000 national jobs, regional jobs approximately 2% of the national amount.

AR 39. During the hearing, Plaintiff's counsel asked Mr. Lister to add a “sit/stand option”⁴ to the ALJ's hypothetical. AR 69. Mr. Lister testified that the casino host job would be eliminated and the call out operator job would remain with a 50% erosion of such jobs. AR 70. The surveillance system operator would remain available with no erosion. AR 70.

The ALJ found that these three representative jobs were significant numbers and Mr. Lister's testimony was consistent with the DOT. AR 39. The ALJ noted that the DOT did not address a sit/stand option and Mr. Lister's testimony regarding this option was based on his experience. *Id.* A sit/stand option was not supported by the evidence; however, even with a sit/stand option, the ALJ found that Ms. Uncango could work as either a call out operator (with a 50% erosion) or a surveillance system monitor. *Id.* This would still leave a significant number

⁴ Neither the Decision nor the hearing testimony define the so-called “sit/stand option.” *See* AR 38–39, 69–70. In an unpublished decision, the Ninth Circuit noted that the DOT does not discuss a “sit-stand option” and stated that the term was “most reasonably interpreted as sitting or standing ‘at-will’, based on the record.” *Buckner-Larkin v. Astrue*, 450 F. App'x 626, 627 (9th Cir. 2011) (finding that “conflict” between “sit-stand option” and DOT was adequately addressed by the vocational expert). In another unpublished decision, the Ninth Circuit cited SSR 83-12 with regard to the sit-stand option, noting that in some disability claims, the claimant's RFC assessment “is compatible with the performance of either sedentary or light work except that the person must alternate periods of sitting and standing.” *Manes v. Astrue*, 267 F. App'x 586, 588 (9th Cir. 2008). Ms. Uncango does not challenge the exclusion of the sit/stand option from her RFC or Mr. Lister's testimony regarding the sit/stand option.

1 of jobs. *Id.* Considering Uncango’s age, education, work experience, and RFC, the ALJ
 2 determined that she could perform jobs that exist in significant numbers in the national economy.
 3 *Id.* A finding of “not disabled” was, therefore, appropriate under the framework of the Grids. *Id.*

4 **III. THE PARTIES’ POSITIONS ON APPEAL**

5 **A. Ms. Uncango’s Position**

6 Ms. Uncango seeks reversal and remand of the ALJ’s decision on the grounds that the
 7 ALJ failed to properly assess her subjective symptom testimony in assessing her RFC by failing
 8 to properly conduct the mandated two-step analysis. Pl.’s Mot. (ECF No. 21) at 4–5. She
 9 contends the ALJ erred by rejecting her testimony solely on a lack of objective medical evidence.
 10 *Id.* at 8. The ALJ may not reject Ms. Uncango’s testimony “based on a belief that the testimony
 11 is not credible because it lacks support in the objective medical evidence.” *Id.* at 7:20–23 (citing
 12 AR 36–38; *Bunnell v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991) (en banc)). Rather, the
 13 ALJ must find Uncango “not credible as a witness.” *Id.* at 9:5–6.

14 Additionally, Ms. Uncango argues that her ability to perform limited activities of daily
 15 living was not a clear and convincing reason to discount her complaints. *Id.* at 9. The ability to
 16 perform various activities of daily living does not necessarily translate into the ability to perform
 17 in a work setting on a consistent basis. *Id.* at 11. Uncango asserts that the ALJ ignored *how* she
 18 performed her activities, “which is to say not consistent with the ability to perform work activity.
 19 *Id.* at 12. The ALJ’s failure to consider the differences between Ms. Uncango’s “sparse daily
 20 activities and her ability to work” full time was reversible error. *Id.* at 11.

21 **B. The Commissioner’s Position**

22 The Commissioner seeks affirmance of the ALJ’s Decision asserting that the ALJ
 23 properly assessed Ms. Uncango’s credibility and determined that she is not disabled. Opp’n &
 24 Cross-Mot. (ECF Nos. 22, 23). The Commissioner argues that the Decision provides specific,
 25 permissible reasons for finding Uncango’s testimony less than fully credible and her
 26 disagreement with the ALJ is not evidence of error. *Id.* at 2. For example, in contrast to her
 27 admitted activities such as driving, grocery shopping, and housework, Uncango claims total
 28 dysfunction. *Id.* at 4–5 (citing AR 54–56, 148–49).

The Commissioner further argues that the Motion misstated the law and the ALJ's findings. Ms. Uncango relied on *Bunnell* for the proposition that an ALJ may not rely on a lack of objective medical evidence to reject subjective pain testimony. Pl.'s Mot. (ECF No. 21) at 7–8. The Commissioner asserts that “*Bunnell* prohibits discrediting Uncango’s statements *solely* on the basis of conflicting objective evidence.” Opp’n & Cross-Mot. at 6; *see Bunnell*, 947 F.2d at 343–46. “The *Bunnell* standard is not applicable where, as here, the ALJ cited to the inconsistency between Uncango’s statements and the medical evidence *in addition to* contrasting Uncango’s allegations to her relatively normal activities of daily living.” *Id.* at 6:2–5. The ALJ cited to specific evidence about Ms. Uncango’s daily activities and connected his findings about her activities to his conclusion that Uncango was not credible by stating that despite Uncango’s alleged impairments, her activities constituted a “relatively normal level of daily activity and interaction.” *Id.* at 6:22–25 (citing AR 36). The Decision explained the ALJ’s reasoning and gave clear analysis of the record in support of his opinion. *Id.* at 6 (citing AR 36–38). Thus, the Commissioner maintains that the ALJ’s credibility finding is supported by substantial evidence and free from legal error.

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I. THE ALJ PROPERLY EVALUATED MS. UNCANGO’S CREDIBILITY

In assessing the credibility of a claimant’s testimony regarding subjective pain or the intensity of symptoms, the ALJ engages in a two-step analysis. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). In the first step, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment that could reasonably be expected to produce the pain or other symptoms alleged. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007)). In this first step, a claimant need only show that his or her impairment could reasonably have caused *some degree* of the symptom alleged. *Garrison*, 759 F.3d at 1014 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)). A claimant is not required to (i) show that the impairment could reasonably be expected to cause the severity of the symptom, or (ii) produce objective medical evidence of the pain or fatigue, or the severity thereof. *Id.*

If a claimant satisfies the first step of this analysis, and there is no evidence of malingering, the ALJ may only reject the claimant’s testimony about the severity of her symptoms “by offering specific, clear and convincing reasons for doing so.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Lingenfelter*, 504 F.3d at 1036); *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (“[U]nless an ALJ makes a finding of malingering based on affirmative evidence thereof, he or she may only find an applicant not credible by making specific findings as to credibility and stating clear and convincing reasons for each.”).⁵ As the Ninth Circuit has recognized, this is not an easy requirement to meet because the “clear and convincing standard is the most demanding required in Social Security cases.” *Garrison*, 759 F.3d at 1015 (quoting *Moore v. Comm’r Soc. Sec.*

⁵ The Commissioner argues that the “clear and convincing” standard does not apply to the ALJ’s credibility determination because it is contrary to 42 U.S.C. § 405(g) and does not give proper deference to the standard set forth in SSA regulations. *See* Opp’n & Cross-Mot. (ECF Nos. 22, 23) at 3 n.1 (discussing *Garrison*, 759 F.3d at 1015 n.18; *Burrell v. Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014)). However, the Ninth Circuit has specifically and repeatedly rejected this position. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492–93 (9th Cir. 2015) (noting that the Commissioner disputed the “clear and convincing” standard and finding that *Burrell* foreclosed the Commissioner’s argument).

1 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). However, “the ALJ is not required to believe every
2 allegation of disabling pain,” otherwise disability benefits “would be available for the asking, a
3 result plainly contrary to 42 U.S.C. § 423(d)(5)(A).” *Molina*, 674 F.3d at 1112 (quoting *Fair v.*
4 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

5 In evaluating a claimant’s testimony, the ALJ may use “ordinary techniques of credibility
6 evaluation.” *Molina*, 674 F.3d at 1112 (quoting *Turner v. Comm’r Soc. Sec.*, 613 F.3d 1217,
7 1224 n.3 (9th Cir. 2010)). For example, an ALJ may consider factors such as: (i) inconsistencies
8 either in the claimant’s testimony or between the testimony and the claimant’s conduct; (ii)
9 unexplained or inadequately explained failure to seek treatment or to follow a prescribed course
10 of treatment; (iii) whether the claimant engages in daily activities inconsistent with the alleged
11 symptoms; (iv) the observations of treating and examining physicians and other third parties
12 regarding the claimant’s symptoms; (v) functional restrictions caused by the symptoms; and (vi)
13 the claimant’s daily activities. *Molina*, 674 F.3d at 1112; *Rounds v. Comm’r Soc. Sec. Admin.*,
14 807 F.3d 996, 1006 (9th Cir. 2015) (quoting *Smolen*, 80 F.3d at 1284).

15 “A finding that a claimant’s testimony is not credible ‘must be sufficiently specific to
16 allow a reviewing court to conclude the adjudicator rejected the claimant’s testimony on
17 permissible grounds and did not arbitrarily discredit a claimant’s testimony regarding pain.’”
18 *Brown-Hunter*, 806 F.3d at 493 (quoting *Bunnell*, 947 F.2d at 345–46). “General findings are
19 insufficient; rather, the ALJ must identify what testimony is not credible and what evidence
20 undermines the claimant’s complaints.” *Brown-Hunter*, 806 F.3d at 493 (quoting *Reddick v.*
21 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998)); *see also Holohan v. Massanari*, 246 F.3d 1195, 1208
22 (9th Cir. 2001) (“the ALJ must specifically identify the testimony she or he finds not to be
23 credible and must *explain* what evidence undermines the testimony” (emphasis added)).
24 “Although the ALJ’s analysis need not be extensive, the ALJ must provide some reasoning” that
25 will allow a reviewing court “to meaningfully determine whether the ALJ’s conclusions were
26 supported by substantial evidence.” *Brown-Hunter*, 806 F.3d at 495 (quoting *Treichler v.*
27 *Comm’r Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014)).
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1 In this case, the ALJ's credibility findings are supported by substantial evidence because
2 the Decision articulates specific reasons for determining that Ms. Uncango's testimony was not
3 fully credible. AR 35–38. The Decision states that her ability to participate in “a somewhat
4 normal level of daily activity and interaction” undermined the credibility of her “allegations of
5 disabling functional limitations.” AR 36. For example, the ALJ noted that Uncango prepared
6 meals, helped her daughters with their homework, and watched television. AR 35, 147–54. She
7 admitted she could do housework including washing dishes, washing clothes, dusting, and
8 vacuuming. AR 35, 149. She reported that she drove a vehicle, went outside at least once a day,
9 and regularly shopped in stores. AR 35, 150. Uncango's self-reports demonstrate that her daily
10 activities were not sporadic or minimal and they contradict her claims of totally debilitating
11 impairments. Notably, the third-party function report prepared by Ms. Chargualaf presented
12 allegations and admissions very similar to Ms. Uncango's statements. AR 36 (citing AR 139–
13 46). Based on the testimony and medical evidence, the ALJ could reasonably conclude that
14 Uncango's daily activities undermined her claim that she was incapable of doing sedentary light
15 work because of her pain. AR 35–38, 139–54.

16 Ms. Uncango asserts that her ability to perform limited activities of daily living was not a
17 clear and convincing reason to discount her complaints. It is true that a claimant need not
18 vegetate in a dark room to be eligible for benefits; however, “the ALJ may discredit a claimant's
19 testimony when the claimant reports participation in everyday activities indicating capacities that
20 are transferable to a work setting.” *Molina*, 674 F.3d at 1112–13. Even when those activities
21 suggest some difficulty in functioning, “they may be grounds for discrediting the claimant's
22 testimony to the extent that they contradict claims of a totally debilitating impairment.” *Id.* at
23 1113 (affirming ALJ's decision to discount claimant's testimony based on inconsistencies with
24 claimant's alleged total disability and her daily activities such as caring for her young
25 grandchildren, driving a car short distances, shopping once a month, and watching TV); *see also*
26 *Rounds*, 807 F.3d at 1006 (affirming adverse credibility determination based on inconsistencies
27 with claimant's alleged total disability and her ability to care for her daughter and her cats,
28 prepare simple meals, share house work with her roommate, shop for groceries, and pay bills

1 even though she testified about intermittent severe pain in her shoulders, neck, and back);
2 *Morgan v. Apfel*, 169 F.3d 595, 600 (9th Cir. 1999) (claimant's ability to fix meals, do laundry,
3 work in the yard, and occasionally care for his friend's child was evidence of claimant's ability
4 to work).

5 However, the Ninth Circuit has "repeatedly warned that ALJs must be especially cautious
6 in concluding that daily activities are inconsistent with testimony about pain, because
7 impairments that would unquestionably preclude work and all the pressures of a workplace
8 environment will often be consistent with doing more than merely resting in bed all day."
9 *Garrison*, 759 F.3d at 1016 (citing *Smolen*, 80 F.3d at 1287 n.7 ("The Social Security Act does
10 not require that claimants be utterly incapacitated to be eligible for benefits, and many home
11 activities may not be easily transferable to a work environment where it might be impossible to
12 rest periodically or take medication."); *Fair*, 885 F.2d at 603 ("[M]any home activities are not
13 easily transferable to what may be the more grueling environment of the workplace, where it
14 might be impossible to periodically rest or take medication.")). Recognizing that "disability
15 claimants should not be penalized for attempting to lead normal lives in the face of their
16 limitations," the Ninth Circuit has held that a claimant's activities of daily living would have a
17 bearing on her credibility only if her level of activity were inconsistent with her claimed
18 limitations. *Garrison*, 759 F.3d at 1016 (quoting *Reddick*, 157 F.3d at 722).

19 In this case, the ALJ reasonably concluded that Uncango's daily activities were
20 inconsistent with her claimed total disability. In *Garrison*, the claimant was heavily assisted by
21 her mother in caring for her daughter, was regularly prohibited from activities such as doing
22 laundry, and would often nap for several hours per day. *Id.* Thus, her ability to talk on the
23 phone, prepare meals once or twice a day, and occasionally clean a room was still consistent with
24 an inability to function in a workplace environment. *Id.* The Ninth Circuit therefore found that
25 the supposed inconsistencies did "not satisfy the requirement of a clear, convincing, and specific
26 reason" to discredit *Garrison*. *Id.* In contrast, here, the ALJ found that Ms. Uncango was able to
27 care for her daughters by preparing simple meals and helping them with their homework.
28 AR 35; *see also* AR 140, 148 (reporting that no one assisted Uncango in caring for her

1 daughters). Among other activities explicitly described, the ALJ noted that she was able to do
2 housework regularly including washing dishes, washing clothes, dusting, and vacuuming, AR 35,
3 149, although she testified that she had some difficulty sweeping and used her right arm to
4 vacuum due to pain in her left, AR 57. The ALJ also found that Uncango could walk 20 feet
5 before needing to rest, AR 35, which she indicated would last about five minutes. AR 152. The
6 ALJ specifically identified what evidence supported his finding that Ms. Uncango engaged in a
7 “somewhat normal level of activity,” and noted that some of the physical and mental abilities and
8 social interactions required to perform her daily activities were the same as those necessary for
9 obtaining and maintaining employment. AR 36. Thus, the ALJ reasonably concluded that her
10 daily level of activity undermined the credibility of her allegations of disabling functional
11 limitations. *Id.*

12 In addition, the ALJ did not reject Uncango’s testimony based solely on a lack of medical
13 evidence. Rather, to justify discounting Uncango’s testimony, the ALJ found that Uncango was
14 given routine conservative medical care for her conditions including prescription medications.
15 AR 36. In particular, the ALJ noted that no medical source statement from any source suggested
16 functional limitations more restrictive than the RFC stated in the Decision. AR 37. He also
17 noted the lack of treatment records regarding psychiatric claims. *Id.* The ALJ did not
18 completely adopt the RFC assessments of any consultative examiner or state agency consultant,
19 but adopted “specific restrictions on a function-by-function basis” that were “best supported by
20 the objective evidence as a whole.” *Id.* The ALJ gave her the benefit of the doubt by restricting
21 her to light work, even though Dr. Lagstein opined that she would be capable of performing a
22 range of medium work. *Id.* AR 37. However, the ALJ found that Uncango’s testimony
23 regarding the severity of her symptoms, which was similar to that of Ms. Chargualaf, was not
24 supported by the clinical or diagnostic medical evidence. AR 36–37. *See Carmickle v. Comm’r,*
25 *Social Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the medical record
26 is a sufficient basis for rejecting the claimant’s subjective testimony.”); *Rounds*, 807 F.3d at
27 1006 (finding that the ALJ did not err by discounting the claimant’s testimony about the severity
28 of her symptoms because her medical records and daily activities showed a higher level of

1 functionality); *Molina*, 674 F.3d at 1112–14 (affirming ALJ’s decision to discount claimant’s
2 testimony based on inconsistencies with her daily activities and the medical evidence). Viewed
3 as a whole, the ALJ’s adverse credibility was based on his finding that Uncango’s testimony was
4 inconsistent with her daily activities and the medical evidence, which both showed a higher level
5 of functionality than what she alleged. Because the ALJ’s adverse credibility determination was
6 supported by specific, clear, and convincing reasons, the court must uphold it.

7 **CONCLUSION**

8 Judicial review of a decision to deny disability benefits is limited to determining whether
9 the decision is based on substantial evidence reviewing the administrative record as a whole. It
10 is the ALJ’s responsibility to make findings of fact, draw reasonable inferences from the record
11 as a whole, and resolve conflicts in the evidence and differences of opinion. Having reviewed
12 the Administrative Record as a whole, and weighing the evidence that supports and detracts from
13 the Commissioner’s conclusion, the Court finds that the ALJ’s decision is supported by
14 substantial evidence under 42 U.S.C. § 405(g).

15 Accordingly,

16 **IT IS RECOMMENDED:**

- 17 1. Plaintiff’s Motion to Remand (ECF No. 21) be DENIED.
18 2. The Commissioner’s Cross-Motion to Affirm (ECF No. 23) be GRANTED.
19 3. The Clerk of Court be instructed to enter judgment accordingly and close this case.

20 Dated this 30th day of September, 2016.

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23 PEGGY A. LEEN
24 UNITED STATES MAGISTRATE JUDGE
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